

§1365. Designation of uncontrolled hazardous substance sites

1. Investigation. Upon finding, after investigation, that a location at which hazardous substances are or were handled or otherwise came to be located may create a danger to the public health, to the safety of any person or to the environment, the commissioner may:

A. Designate that location as an uncontrolled hazardous substance site; [PL 2005, c. 330, §34 (NEW).]

B. Order any responsible party dealing with the hazardous substances to cease immediately or to prevent that activity and to take an action necessary to terminate or mitigate the danger or likelihood of danger; and [PL 2005, c. 330, §34 (NEW).]

C. Order any person contributing to the danger or likelihood of danger to cease or prevent that contribution. [PL 2005, c. 330, §34 (NEW).]
[PL 2005, c. 330, §34 (RPR).]

2. Orders. Any order issued under this section shall contain findings of fact describing, insofar as possible, the hazardous substances, the site of the activity and the danger to the public health or safety.

[PL 1983, c. 569, §1 (NEW).]

3. Service. Service of a copy of the commissioner's findings and order must be made by the sheriff or deputy sheriff or by hand delivery by an authorized representative of the department in accordance with the Maine Rules of Civil Procedure.

[PL 2005, c. 330, §35 (AMD).]

4. Compliance; appeal. The person to whom the order is directed shall comply immediately and may apply to the board for a hearing on the order if the application is made within 10 working days after receipt of the order by a responsible party. Within 15 working days after receipt of the application, the board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the board chair using any means for signature authorized in the department's rules and published within 2 working days after the hearing and vote. The nature of the hearing before the board is an appeal. At the hearing, all witnesses must be sworn and the commissioner shall first establish the basis for the order and for naming the person to whom the order is directed. The burden of going forward then shifts to the person appealing to demonstrate, based upon a preponderance of the evidence, that the order should be modified or rescinded. The decision of the board may be appealed to the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

[PL 2005, c. 330, §36 (AMD).]

5. Civil action. The Attorney General may file suit in Superior Court to compel any responsible party to abate, clean up or mitigate threats or hazards posed or potentially posed by an uncontrolled site.

[PL 1983, c. 569, §1 (NEW).]

6. Enforcement; penalties; punitive damages. Any responsible party who fails without sufficient cause to undertake removal or remedial action promptly in accordance with an order issued pursuant to section 1304, subsection 12 and this section may be liable to the State for punitive damages in an amount at least equal to, and not more than 3 times, the amount expended by the commissioner as a result of such failure to take proper action.

The Attorney General is authorized to commence a civil action against any such responsible party to recover the punitive damages, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the commissioner pursuant to this subsection must be deposited in the Uncontrolled Sites Fund.

[PL 1993, c. 355, §61 (NEW).]

SECTION HISTORY

PL 1983, c. 569, §1 (NEW). PL 1985, c. 746, §35 (AMD). PL 1989, c. 890, §§A40,B268 (AMD).
PL 1993, c. 355, §61 (AMD). PL 2005, c. 330, §§34-36 (AMD).

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